

Industry Circular



Internal Revenue Service
Alcohol, Tobacco and Firearms Division
Washington, D.C. 20224

Industry Circular No. 71-27

December 1, 1971

DISTRIBUTION OF EXPLOSIVE MATERIALS BY LICENSEES TO OUT-OF-STATE BUSINESS ENTITIES, OTHER THAN LICENSEES OR PERMITTEES, AND DISTRIBUTION TO NONRESIDENT EMPLOYEES OF SUCH ENTITIES

Explosives licensees under Title 18, United States Code,
Chapter 40 and others concerned:

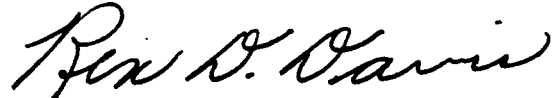
Purpose. The purpose of this circular is to clarify the provisions of Chapter 40 which prohibit the sale or distribution of explosive materials by licensees to nonlicensees and nonpermittees who do not reside in the licensees' States of residence.

Background. The provisions of 18 U. S. C. 842(b) generally prohibit a licensee's distribution of explosive materials to a nonlicensee or nonpermittee who does not reside in the State where distribution is made and in which the licensee is licensed to do business. This section has prompted the inquiry whether a licensee may lawfully distribute such materials to out-of-state construction companies and other business entities not having Federal permits but who are using materials at job sites within the distributor's State of residence. Licensees have also inquired whether they may lawfully distribute explosive materials to such entities when the employees arranging the purchase and accepting delivery reside outside the distributors' States of residence.

State of residence of a business entity. Although the term "State of residence" is not specifically defined by law, the regulations provide that the State of residence of an individual is the State in which he regularly resides or maintains his home. The Service has determined that if the person is a corporation or other business entity, "State of residence" means the State where it maintains a place of business. A business entity would acquire a State of residence where it has a "place of business" despite the fact that administrative work is performed in another State. Furthermore, it would not be essential to a determination of State of residence that a branch office is maintained in that State. For example, a company engaged in construction work would acquire a residence in each State wherein its work is performed. Its place of business in those States would be the job sites at which business is carried on. Therefore, the company would not need a permit to acquire explosive materials from a licensee in such States for use at the job sites therein. Item 13 of the required Explosives Transaction Record, Form 4710, would show the out-of-state address of the business entity as the principal place of business and the location of the job site as the local place of business.

Residence of employees acquiring explosive materials on behalf of nonpermittee business entities. The fact that the employee of a resident business entity does not reside in the same State as the distributor is immaterial. The purpose of the data requested in Items 14, 16 and 17 of Form 4710 is to identify the person authorized by the business entity to make the purchase of explosive materials on the entity's behalf and to assure the distributor that such person appears on the required certified list of names of representatives or agents authorized by the business entity to acquire the materials.

This information is required by 18 U. S. C. 842(f) and 26 CFR 181.105(e) of the regulations. Furthermore, the purpose of the data requested in the Explosives Delivery Record, Form 4721, is to identify the employee of the business entity or the employee of a carrier accepting delivery of explosive materials on behalf of the distributee at the distributor's business premises (see 26 CFR 181.105(f)). Thus, in the case of business entities, the information required on Forms 4710 and 4721 with respect to employees or agents arranging for the distribution is not for the purpose of establishing the residence of such persons but only for identification purposes.



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